

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY POLICY
WASHINGTON, D.C. 20502

August 15, 2019

Jamie Corey
Senior Researcher, Documented
PO Box 2580884
Madison, WI 53725
70972-48552884@requests.muckrock.com

Re: OSTP-FOIA-19-036

Dear Ms. Corey:

This letter is in final response to a Freedom of Information Act (henceforth “FOIA”)¹ request submitted to the Office of Science and Technology Policy (hereafter “OSTP”) on March 26, 2019. Specifically, the request sought:

- “All agency records regarding the Presidential Committee on Climate Security (PCCS), including but not limited to, agency records regarding the Deputies Committee Meeting on the Presidential Committee on Climate Security which took place on February 22, 2018 including but not limited to meeting minutes, correspondence and memos prepared in preparation for this meeting, and contemporaneous notes.”
- “All communications between, OSTP Director, Kelvin Droegemeier and Will Happer, Patrick Moore, or any member or representative of the CO2 Coalition.”

Following receipt of this request, OSTP performed a search of its files and located records responsive to the request. On June 3, 2019, OSTP forwarded five pages as part of an interim release. After completing review of the remaining records, OSTP is now releasing forty-five pages in part, with redactions taken pursuant to Exemptions Five and Six of the FOIA.² An explanation of the exemptions and their application to the information contained in this response is provided below.

Exemption Five

Exemption Five of the FOIA permits the withholding of “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in

¹ 5 U.S.C. § 552.

² 5 U.S.C. § 552(b)(5)-(6).

litigation with the agency.”³ Accordingly, Exemption Five traditionally incorporates the civil discovery privileges: the deliberative process privilege, the presidential communications privilege, and the attorney-client privilege, among others.⁴ In this instance, the information being withheld under Exemption Five is protected from disclosure by the deliberative process and presidential communications privileges.

In order to qualify for the deliberative process privilege, the information must meet three requirements. First, it must be internal to the executive branch agencies.⁵ Second, the information must be pre-decisional, meaning it was prepared prior to an agency decision.⁶ Third, it must constitute a direct part of the deliberative process by offering recommendations or expressing opinions on legal or policy matters.⁷ In this case, OSTP is withholding information that includes correspondence between members of OSTP and other components of the Executive Office of the President that contain suggestions and recommendations on non-final agency actions. This meets the requirements of Exemption Five in that, first, the information is internal to executive branch agencies. Second, that the correspondence refers to agency actions that had not yet taken place demonstrates that the information was pre-decisional. Finally, the information is deliberative in that it contains recommendations on potential courses of action on policy-related matters. Release of this information would chill internal debate and inhibit the free-flow of ideas among Federal employees, thereby violating the interests protected by Exemption Five.⁸

While some of the information withheld pursuant to Exemption Five is protected under the deliberative process privilege, other portions are withheld under the presidential communications privilege. The presidential communications privilege “preserves the President’s ability to obtain candid and informed opinions from his advisors and to make decisions confidentially.”⁹ This privilege applies to “communications directly involving and documents actually viewed by the President.”¹⁰ The D.C. Circuit holds that this privilege also includes “documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with]... broad and significant responsibility for investigating and formulating the advice to be given to the President.’”¹¹ While the privilege includes records that reflect “presidential decision-making and deliberations,” those records need not be predecisional to qualify for protection.¹² Finally, when the privilege applies, it allows withholding of the entire document.¹³ In reviewing documents responsive to this request, OSTP withheld several memoranda that were drafted and compiled by the Deputy Chief of Staff and Staff Secretary for review by the President and his immediate White House advisers. As these documents were “solicited and received” by the

³ *Id.*

⁴ *U.S. v. Weber Aircraft Corp.*, 465 U.S. 792, 800 (1984).

⁵ See 5 U.S.C. § 552(b)(5).

⁶ *Mapother v. Dep’t of Justice*, 3 F.3d 1533, 1537 (D.C. Cir. 1993); *Schell v. Health and Human Serv.’s*, 843 F.2d 933, 941 (6th Cir. 1988).

⁷ *Access Reports v. Dep’t of Justice*, 926 F.2d 1192, 1196 (D.C. Cir. 1991).

⁸ *Russell v. Dep’t of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982).

⁹ *Loving v. Dep’t of Defense*, 550 F.3d 32, 37 (D.C. Cir. 2008).

¹⁰ *In re Sealed Case*, 121 F.3d 729, 744-45 (D.C. Cir. 1997).

¹¹ *Loving*, 550 F.3d at 37 (quoting *In re Sealed Case*, 121 F.3d at 744-45).

¹² *Id.*

¹³ *Id.*

President, his Chief of Staff, and other members of his immediate staff, they fall squarely within the presidential communications privilege and may be withheld under Exemption Five.¹⁴

Exemption Six

Exemption Six of the FOIA protects the privacy interests of individuals.¹⁵ It permits an agency to protect information within “personal and medical files and similar files” if disclosure “would constitute a clearly unwarranted invasion of personal privacy.”¹⁶ To determine whether information may be withheld under Exemption Six, an agency must undertake a three-step analysis. First, the agency must determine whether a protectable privacy interest would be compromised by the disclosure of the record.¹⁷ If no privacy interest is identified, the information may not be withheld pursuant to the exemption.¹⁸ Second, the agency must determine whether the release of the document would further the public interest by shedding light on the operations and activities of the government.¹⁹ In cases where no public interest exists “even a modest privacy interest” will outweigh it every time.²⁰ Finally, the agency must balance the identified privacy interests against the public interest in disclosure.²¹ In this case, direct phone lines and e-mail addresses are being withheld. Individuals, including OSTP employees, have a protectable privacy interest in maintaining the confidentiality of their direct lines and email addresses, as their release would potentially subject them to undue harassment from members of the public. Additionally, the release of this information does not shed light on the operations of the Federal government. Accordingly, the privacy interests inherent in the withheld information outweigh the public interest in release, and the information may be withheld pursuant to Exemption Six.²²

Accordingly, this completes the processing of the request, and OSTP now considers the request closed. Pursuant to the FOIA and OSTP regulations, a requester may submit a written appeal contesting any adverse determination.²³ Any appeal related to the processing of this request must either be sent: 1) via e-mail to OSTPFOIA@ostp.eop.gov; or 2) by mail to Chief FOIA Officer, Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Ave., NW., Washington, DC 20502.²⁴ In the appeal letter, please specify OSTP Control No. 19-036, “the records requested, and the basis for the appeal.”²⁵ Any appeal must be sent to one of the above listed addresses no later than ninety (90) calendar days after the date of this letter.²⁶

¹⁴ *In re Sealed Case*, 121 F.3d 729, 744-45 (D.C. Cir. 1997).

¹⁵ *Russell*, 682 F.2d 1045, 1048 (D.C. Cir. 1982).

¹⁶ *Id.*

¹⁷ *See Multi AG Media LLC v. Dep’t of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008).

¹⁸ *Id.*

¹⁹ *See id.*

²⁰ *Nat’l Ass’n of Retired Fed. Employees v. Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989).

²¹ *Dep’t of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487, 497 (1994).

²² *Id.*

²³ 5 U.S.C. § 552(a)(6)(A)(i)(III)(aa); 32 C.F.R. § 2402.7(a).

²⁴ 32 C.F.R. § 2402.7(b).

²⁵ *Id.*

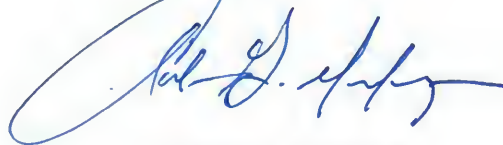
²⁶ 5 U.S.C. § 552(a)(6)(A)(i)(III)(aa).

Finally, requesters also have the right to seek dispute resolution services from OSTP's FOIA Public Liaison or the Office of Government Information Services (hereinafter "OGIS"). To employ these services, please contact Andrew Mendoza via telephone at (202) 456-4444 or by way of e-mail at OSTPFOIA@ostp.eop.gov. If you would prefer to contact OGIS, you may do so in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphia Road-OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: (202) 741-5770
Fax: (202) 741-5769
Toll-free: 1 (877) 684-6448

If you have any questions, please do not hesitate to contact me via telephone or by way of e-mail.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew G. Mendoza", with a large, stylized flourish at the end.

Andrew G. Mendoza
Senior Legal Counsel and Policy Advisor

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Two-Week Look Ahead: Feb 4

From: Policy Coordinator (b) (6)

To: Policy Coordinator (b) (6)

Cc: Staff Secretary (b) (6)

Date: Mon, 04 Feb 2019 08:39:58 -0500

Attachments Policy Outlook 2.4.19.docx (54.52 kB); 30 Day Event Outlook 2.1.19 ap v1.pdf
: (503.62 kB); 30 Day Policy Outlook 2.1.19 ap v1.pdf (348.11 kB)

Attached please find the latest two week look ahead, as well as the 30-day agency reports from Cabinet Affairs. (b) (5)

All components should update the look ahead weekly, on Thursday evening.

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FW: REMINDER: 2-Week Look Ahead updates

From: "Georges, Liza B. EOP/WHO" (b) (6) >
To: "Diana, Grace A. EOP/OSTP" <(b) (6)>
Date: Fri, 08 Feb 2019 10:48:41 -0500
Attachments: Policy Outlook 2.11.19.docx (46.77 kB)

Did this ever come through? Let me know if you have any edits from OSTP. Thanks!

From: Georges, Liza B. EOP/WHO
Sent: Thursday, February 7, 2019 4:37 PM
To: Diana, Grace A. EOP/OSTP (b) (6)
Subject: FW: REMINDER: 2-Week Look Ahead updates

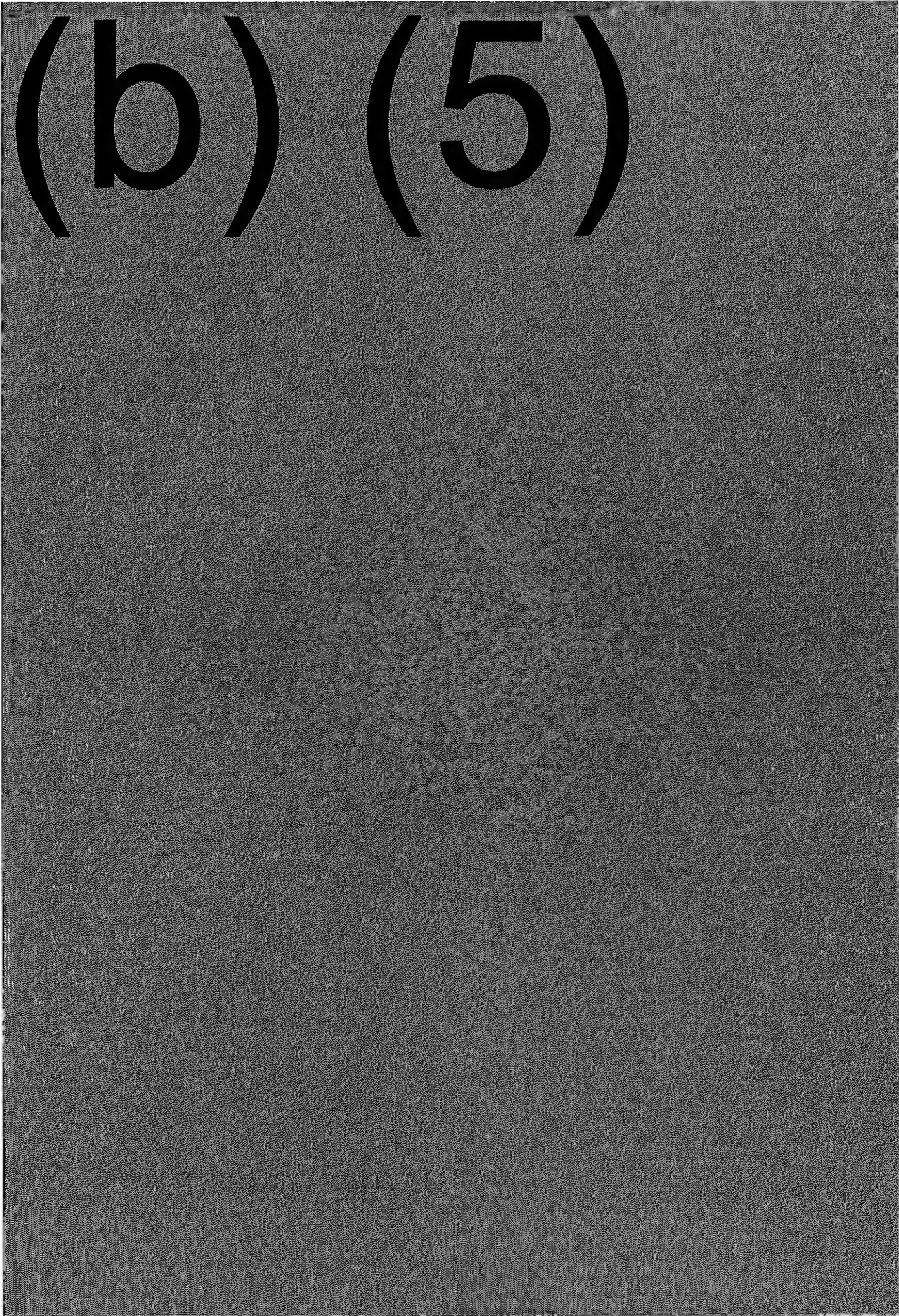
From: Policy Coordinator
Sent: Thursday, February 7, 2019 11:24 AM
To: Policy Coordinator (b) (6)
Cc: Staff Secretary (b) (6)
Subject: REMINDER: 2-Week Look Ahead updates

A friendly reminder to submit your component's two-week look ahead updates to Policy Coordinator by **5:00pm this evening.**

Thank you,

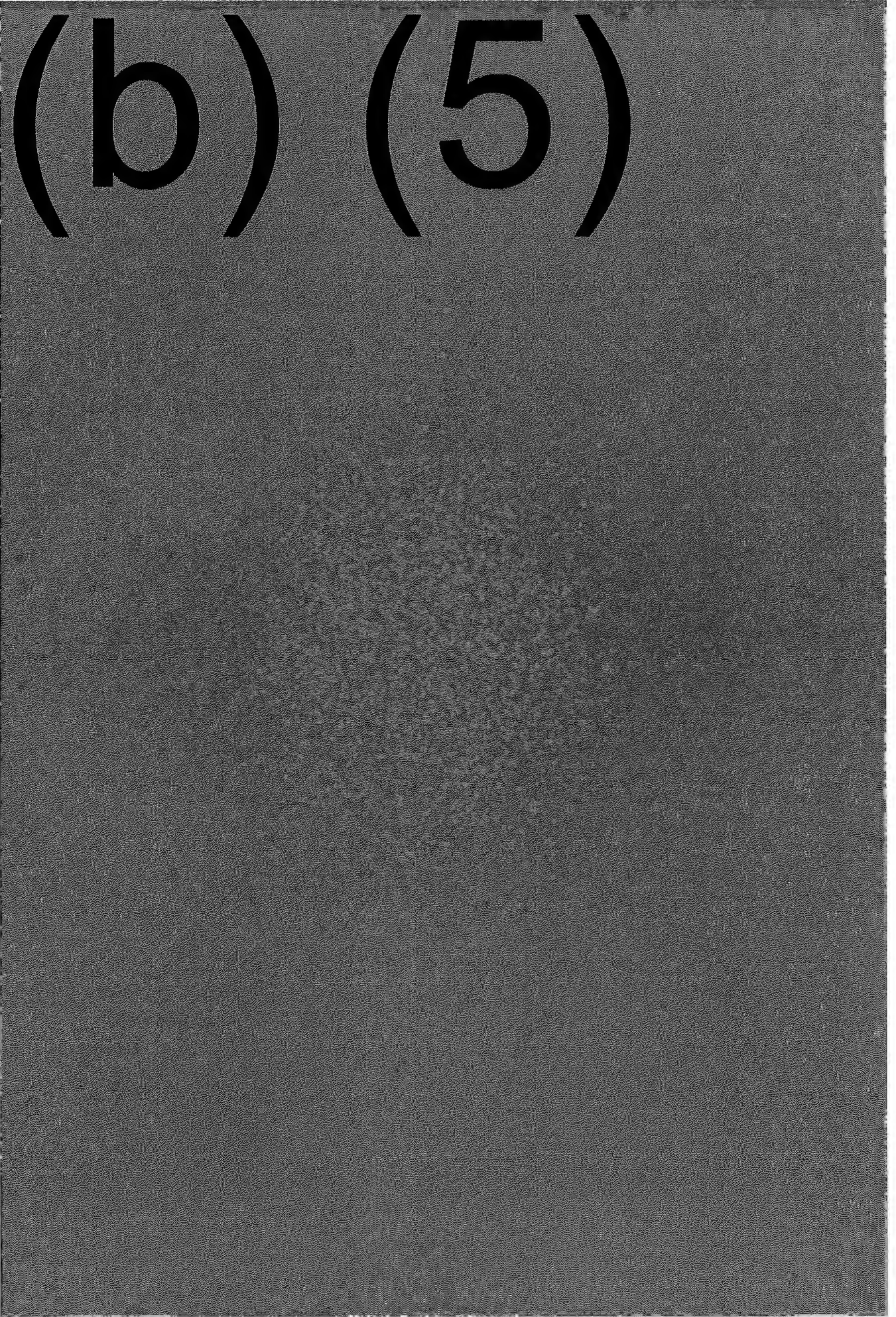
DCOS/P

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WH Look Ahead: February 11

From: Policy Coordinator (b) (6)
To: Policy Coordinator <(b) (6)>
Cc: Staff Secretary (b) (6)
Date: Mon, 11 Feb 2019 05:05:54 -0500
Attachments Policy Outlook 2.11.19.docx (47.99 kB); 30 Day Policy Outlook 2.8.19 ap v1.pdf
: (352.93 kB); 30 Day Event Outlook 2.8.19 ap v1.pdf (533.11 kB)

Attached please find the latest two week look ahead, as well as the 30-day agency reports from Cabinet Affairs. (b) (5)

(b) (5). All components should update the look ahead weekly, on Thursday evening.

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REMINDER: 2-Week Look Ahead Updates

From: Policy Coordinator (b) (6)
To: Policy Coordinator (b) (6)
Date: Thu, 14 Feb 2019 10:11:51 -0500
Attachments: Policy Outlook 2.14.19.docx (46.72 kB)

A friendly reminder to submit your component's two-week look ahead to Policy Coordinator by **5:00pm this evening.**

Thank you,

DCOS/P

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FW: WH Look Ahead: February 18

From: "Droegemeier, Kelvin K. EOP/OSTP" (b) (6) >
To: "Kratsios, Michael J. EOP/OSTP" (b) (6) >, "Bonyun, Sean C. EOP/OSTP" (b) (6)
Date: Tue, 19 Feb 2019 08:53:21 -0500
Attachments: Policy Outlook 2.18.19.docx (47.39 kB); 30 Day Event Outlook 2.15.19 ap v1.pdf (529.03 kB); 30 Day Policy Outlook 2.15.19 ap v1.pdf (340.9 kB)

From: Policy Coordinator (b) (5)
Sent: Monday, February 18, 2019 6:03 PM
To: Policy Coordinator (b) (5)
Subject: WH Look Ahead: February 18

Attached please find the latest two week look ahead, as well as the 30-day agency reports from Cabinet Affairs. (b) (5)

(b) (5) All components should update the look ahead weekly, on Thursday evening.

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REMINDER: 2-Week Look Ahead

From: Policy Coordinator (b) (6)
To: Policy Coordinator (b) (6)
Date: Thu, 21 Feb 2019 09:19:21 -0500
Attachments: Policy Outlook 2.21.19.docx (46.12 kB)

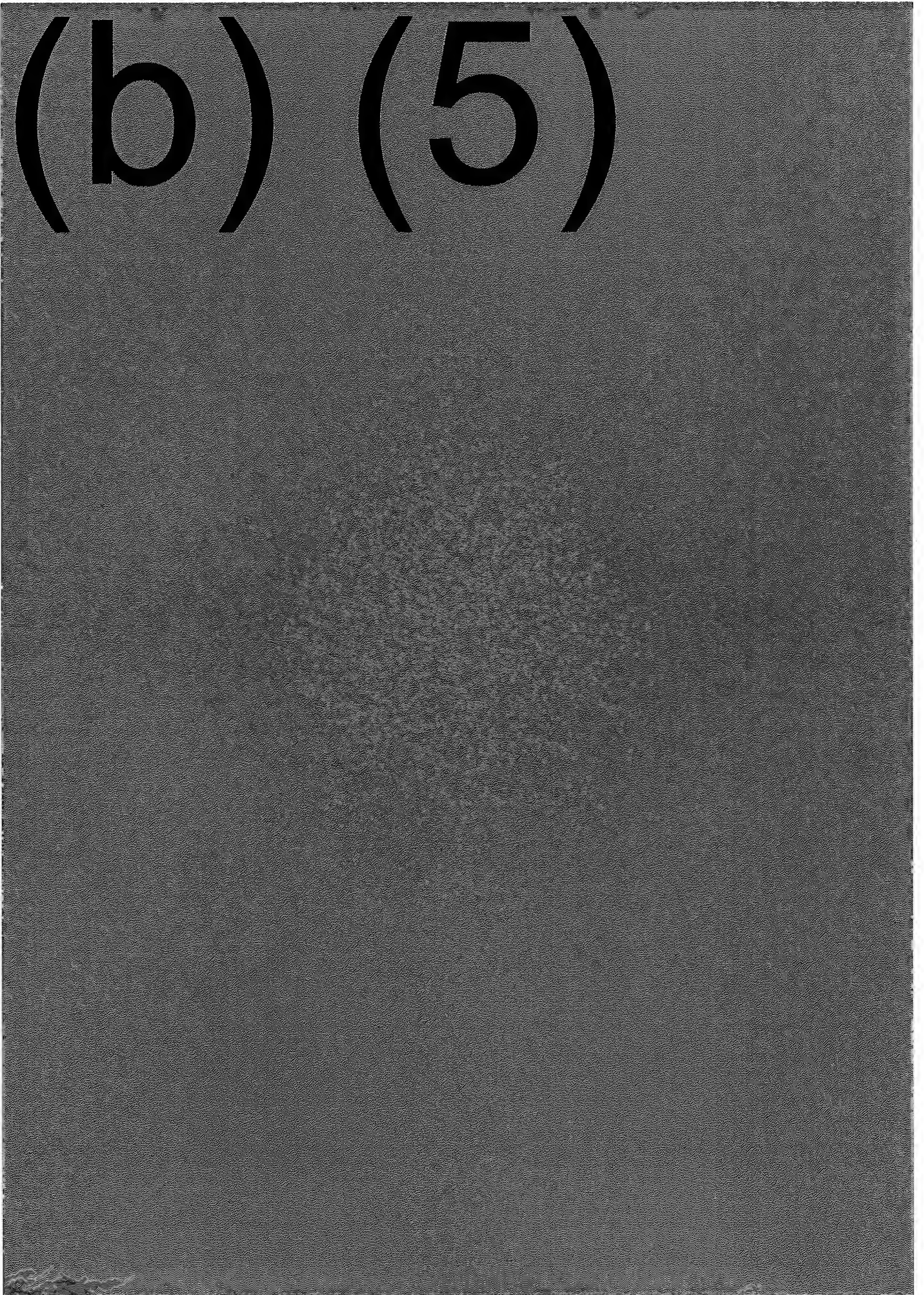
A friendly reminder to submit your component's two-week look ahead to Policy Coordinator by **5:00pm this evening.**

Thank you,

DCOS/P

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WH Look Ahead: February 25

From: Policy Coordinator (b) (5)

To: Policy Coordinator (b) (5)

Date: Sun, 24 Feb 2019 20:49:55 -0500

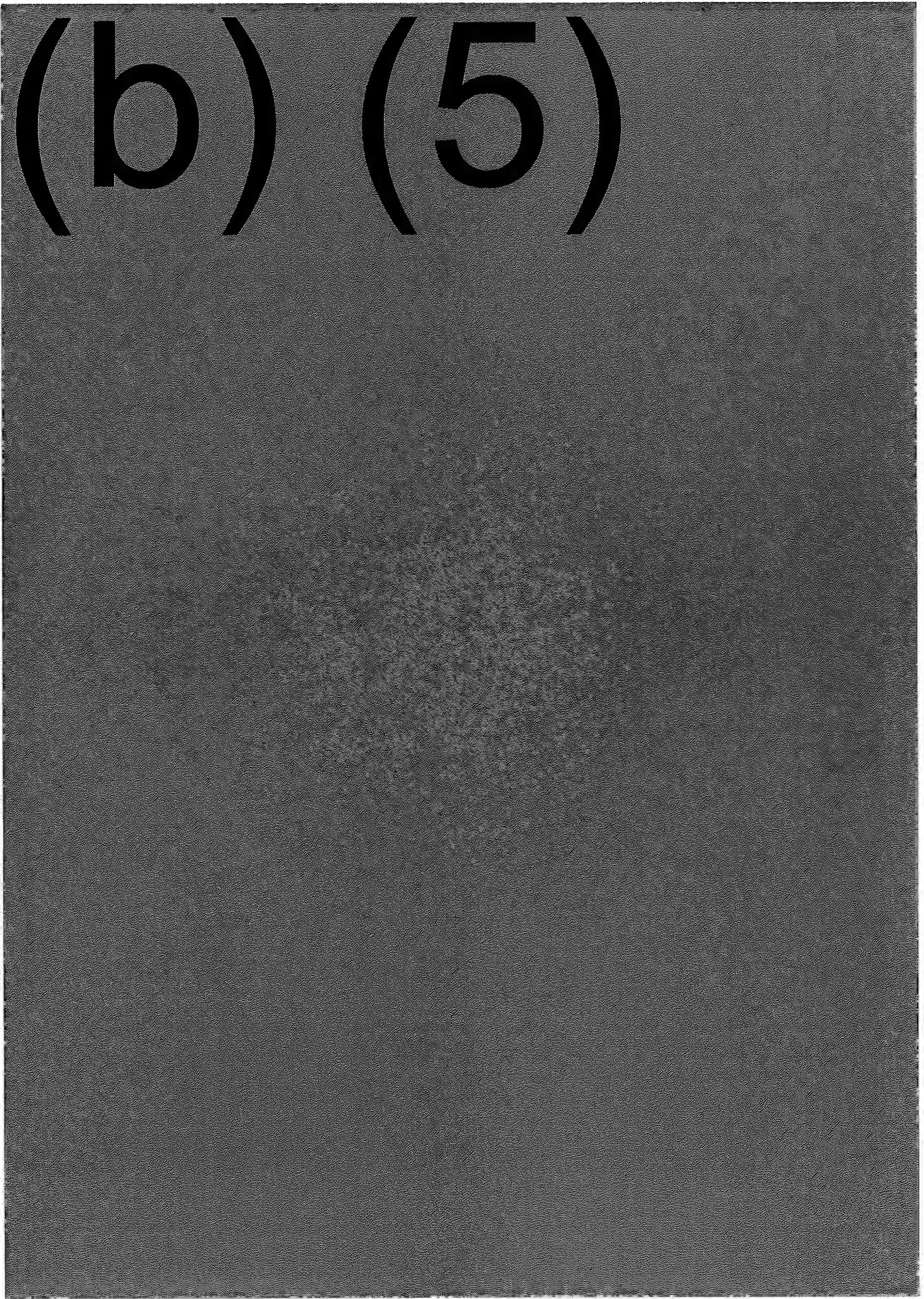
Attachments Policy Outlook 2.25.19.docx (49.53 kB); 30 Day Event Outlook 2.22.19 ap v1.pdf
: (532.52 kB); 30 Day Policy Outlook 2.22.19 ap v1.pdf (365.14 kB)

Attached please find the latest two week look ahead, as well as the 30-day agency reports from Cabinet Affairs. (b) (5)

All components should update the look ahead weekly, on Thursday evening.

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